IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1263 OF 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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THE ORIENTAL FIRE & GENERAL INSURANCE CO. LTD. - Appellant
Versus
KANTABEN, WD/O KISHORBHAI
PRABHUDAS PATEL & ORS.- Respondents

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Appearance :
Shri Rajni H. Mehta for Appellant(s).
None for Respondents though names of Shri P.K. Parekh and Shri A.J. Patel are shown in the Daily Board..

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 09/08/2007

ORAL JUDGMENT

Being aggrieved by the judgement and award dated 28th

December, 1984 passed by the learned Motor Accident Claims Tribunal (Main), Nadiad in M.A.C.P. No.971 of 1982, the appellant-Insurance Company is before this Court with a submission that no award could be made against the Insurance Company because present is a case where the passengers were travelling in a goods vehicle.

2. From paragraph-4 of the judgement of the learned Tribunal below, it would appear that number of persons boarded the truck on payment of hire charges and the deceased – Kishorebhai boarded the truck along with his goods on payment of freight for the goods.

3. The Supreme Court, in the matter of the ***New India Assurance Co. Ltd. vs. Vedwati & Ors.***, [***AIR 2007 SC 1334***], held that if a passenger, either for hire or reward, is travelling in a goods vehicle, then, the Insurance Company would not be liable.

4. In view of the said judgement of the Supreme Court, the appeal is allowed. The Insurance Company is exonerated of all its liabilities. No costs.

5. The appellant-Insurance Company, in discharge of its liability under the award, has deposited the entire amount with the Tribunal. If the full amount has not been disbursed in favour of the

claimants, then, the balance amount be refunded back to the Insurance Company. If some amount or the entire amount has been paid to the claimants, then, the Insurance Company would be entitled to recover the amount from the owner and driver of the truck with interest @ 6% per annum from the date they deposited the amount with the Tribunal.

[R.S.Garg, J.]

*kamlesh**